IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5264 OF 2004

P.N. Tajanpure .. Petitioner.

V/s.

The Hon'ble the Chief Justice
and other Hon'ble Judges of
the High Court of Judicature
at Bombay (through the Registrar,
High Court, Bombay) & Others .. Respondents.

Mr.P.S. Dani for the petitioner.

Mr.Vinay Sonpal, AGP for respondent Nos.1 to 3.

CORAM : R.M. LODHA &
J.P. DEVADHAR, JJ.

DATED : 19TH APRIL, 2006.

P.C. :

We heard Mr.P.S. Dani, the counsel for the petitioner.

2. The petitioner was appointed as Civil Judge, Junior Division and Judicial Magistrate First Class on 11th May, 1992. While he was posted as Civil Judge, Junior Division and Judicial Magistrate First Class at Karjat for the period from 5th June, 1995 to 7th May, 1998, a Junior Clerk Smt.L.V. Raipelli working in that Court lodged a complaint that she was sexually harassed by the petitioner. Based on the said complaint, discreet enquiry was conducted, and, it was decided to hold disciplinary enquiry against the petitioner. The Article of Charge and Memorandum

dated 11th December, 2000 was served upon the petitioner. The petitioner filed reply. After receipt of the reply from the petitioner, an Enquiry Officer was appointed vide order dated 7th April, 2001.

3. During the course of disciplinary enquiry, four witnesses were examined including Smt.L.V. Raipelli. The delinquent examined one defence witness namely Subhash Manohar Honrao. The delinquent also submitted his synopsis of arguments before the enquiry officer. The Enquiry Officer forwarded his report dated 19th October, 2001 to the Disciplinary Authority holding therein that the charge against the petitioner was proved. The Disciplinary Authority issued a notice to the delinquent along with enquiry report asking him to show cause as to why findings recorded by the Enquiry Officer be not accepted and the major penalty prescribed under Rule 5(1)(vii) to (ix) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 be not imposed upon him. Upon receipt of the said show cause notice, the petitioner submitted his representation before the Disciplinary Authority.

4. The Disciplinary Authority considered the reply of the petitioner in the light of the material and the report of the Enquiry Officer. The

Disciplinary Authority accepted the findings recorded by the Enquiry Officer and decided to recommend imposition of major penalty of dismissal under Rule 5(1)(ix) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. The Government of Maharashtra on receipt of the recommendation from the Disciplinary Authority, passed an order on 24th August, 2002 dismissing the petitioner from service. Aggrieved thereby, the present writ petition has been filed.

5. The counsel for the petitioner made the following submissions : (i) that the initiation of the disciplinary enquiry suffers from delay in as much as by the letter dated 26th March, 1998, the District and Sessions Judge, Ahmednagar felt necessity of enquiry into the conduct of the petitioner on the complaint of sexual harassment made by Smt.L.V. Raipelli, Junior Clerk but the enquiry was initiated on 18th December, 2000. According to the counsel the initiation of enquiry is not within the reasonable period and, therefore, vitiated. (ii) That the order of dismissal suffers from principles of natural justice in as much as no personal hearing was given by the Disciplinary Authority before making recommendation of major penalty for dismissal.

6. Both the contentions raised by the counsel

for the petitioner do not have any merit. That the petitioner was working as a Civil Judge, Junior Division and Judicial Magistrate First Class, Karjat for the period from 5th June, 1995 to 7th May, 1998 is not in dispute. Smt.L.V. Raipelli, a Junior Clerk working in that Court made a written complaint on 18th October, 1997 to the District & Sessions Judge, Ahmednagar. The complaint was elaborate. Smt.L.V. Raipelli also orally informed the District & Sessions Judge, Ahmednagar that she was being sexually harassed by the petitioner. The District & Sessions Judge, Ahmednagar made discreet enquiry and found some substance in the complaint and forwarded the complaint dated 18th October, 1997 with his forwarding letter dated 16th March, 1998 to the Registrar of this Court. It is true that the matter remained pending for some time before the Disciplinary Authority for taking decision on the complaint made by the Clerk against the petitioner for sexual harassment but ultimately by the order dated 18th December, 2000, the decision was taken by the Disciplinary Authority that the disciplinary enquiry needs to be initiated. That the Disciplinary Authority took some time in taking the decision to initiate disciplinary enquiry against the petitioner would not mean that the disciplinary enquiry is vitiated. The disciplinary action against the Judicial Officer is a sensitive and delicate matter

and obviously needs thoughtful deliberation before any administrative action is taken against the Judicial Officer. In the facts and circumstances of the case, by no stretch of imagination can it be said that the disciplinary enquiry is vitiated as it was initiated in the month of December, 2000 though the complaint was made in the month of March, 1998. The first contention raised by the counsel for the petitioner is, accordingly, over-ruled.

7. As regards the second contention that the disciplinary authority ought to have given personal hearing to the delinquent-petitioner before accepting the findings of the Enquiry Officer and recommending the punishment, suffice it to say that necessity of personal hearing to the delinquent-petitioner would only arise in the case where the Disciplinary Authority differs from the findings of the Enquiry Officer. Where the Disciplinary Authority differs from the findings of the Enquiry Officer it is imperative for the Disciplinary Authority to hear the delinquent but such legal requirement is not necessary where the Disciplinary Authority accepts the findings of the Enquiry Officer.

8. It, therefore, cannot be said that the order of dismissal is vitiated for not affording an opportunity of personal hearing by the Disciplinary

Authority.

9. By way of foot note, we may observe that the charge against the delinquent - petitioner is extremely serious. He indulged in sexual harassment to a lady employee working in his Court. The charge is proved by adequate and sufficient evidence. The findings recorded by the Enquiry Officer have been accepted by the Disciplinary Authority. As held by the Supreme Court in the case of High Court of Judicature at Bombay V/s. Shashikant S. Patil, AIR 2000 S.C. 22, the matters like this where the decision has been taken on the administrative side by five judges of the High Court constituting Disciplinary Committee, the judicial review ought to be made with great care and circumspection. The impugned order of dismissal does not call for any interference by way of judicial review as the charge against the delinquent - petitioner is proved with ample evidence and there is no violation of principles of natural justice.

10. The writ petition does not deserve to be admitted. It is dismissed in limine.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)